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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 JUAN FELIPE RECENDEZ,) Case No. EDCV 13-2003-JPR
11 Plaintiff,)
12 vs.) **MEMORANDUM OPINION AND ORDER**
13 CAROLYN W. COLVIN,) **AFFIRMING THE COMMISSIONER**
14 Acting Commissioner of)
15 Social Security,)
16 Defendant.)
17

18 **I. PROCEEDINGS**

19 Plaintiff seeks review of the Commissioner's final decision
20 denying his application for Social Security disability insurance
21 benefits ("DIB") and supplemental security income benefits
22 ("SSI"). The parties consented to the jurisdiction of the
23 undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This
24 matter is before the Court on the parties' Joint Stipulation,
25 filed August 22, 2014, which the Court has taken under submission
26 without oral argument. For the reasons discussed below, the
27 Commissioner's decision is affirmed and judgment is entered in
28 her favor.

1 **II. BACKGROUND**

2 Plaintiff was born on October 27, 1965. (Administrative
3 Record ("AR") 219, 223.) He completed sixth grade, spoke limited
4 English, and worked as a plaster laborer, roofer, and dishwasher
5 in a restaurant. (AR 44, 54-55, 247, 259-62.)

6 On September 29, 2011, Plaintiff filed applications for DIB
7 and SSI, alleging that he had been unable to work since September
8 26, 2009. (AR 113-14, 219-32.) In a disability report, he
9 alleged that he was unable to work because of "[b]roken arm,
10 disc, neck, hip, rib problem." (AR 247.) After Plaintiff's
11 applications were denied initially and on reconsideration, he
12 requested a hearing before an Administrative Law Judge. (AR 133-
13 34.)

14 A hearing was held on May 24, 2013. (AR 39-59.) Plaintiff,
15 who was represented by counsel, testified, as did a vocational
16 expert. (*Id.*) In a written decision issued June 7, 2013, the
17 ALJ determined that Plaintiff was not disabled. (AR 25-34.)
18 On July 23, 2013, Plaintiff requested Appeals Council review.
19 (AR 15.) On September 4, 2013, the council denied the request.
20 (AR 1-5.) This action followed.

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The ALJ's findings and
24 decision should be upheld if they are free of legal error and
25 supported by substantial evidence based on the record as a whole.
26 See *id.*; *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Parra*
27 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
28 evidence means such evidence as a reasonable person might accept

1 as adequate to support a conclusion. Richardson, 402 U.S. at
2 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
3 It is more than a scintilla but less than a preponderance.
4 Lingenfelter, 504 F.3d at 1035. To determine whether substantial
5 evidence supports a finding, the reviewing court "must review the
6 administrative record as a whole, weighing both the evidence that
7 supports and the evidence that detracts from the Commissioner's
8 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
9 1996). "If the evidence can reasonably support either affirming
10 or reversing," the reviewing court "may not substitute its
11 judgment" for that of the Commissioner. Id. at 720-21.

12 **IV. THE EVALUATION OF DISABILITY**

13 People are "disabled" for purposes of receiving Social
14 Security benefits if they are unable to engage in any substantial
15 gainful activity owing to a physical or mental impairment that is
16 expected to result in death or has lasted, or is expected to
17 last, for a continuous period of at least 12 months. 42 U.S.C.
18 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
19 1992).

20 **A. The Five-Step Evaluation Process**

21 The ALJ follows a five-step sequential evaluation process in
22 assessing whether a claimant is disabled. 20 C.F.R.
23 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
24 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
25 step, the Commissioner must determine whether the claimant is
26 currently engaged in substantial gainful activity; if so, the
27 claimant is not disabled and the claim must be denied.
28 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

1 If the claimant is not engaged in substantial gainful
2 activity, the second step requires the Commissioner to determine
3 whether the claimant has a "severe" impairment or combination of
4 impairments significantly limiting his ability to do basic work
5 activities; if not, a finding of not disabled is made and the
6 claim must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

7 If the claimant has a "severe" impairment or combination of
8 impairments, the third step requires the Commissioner to
9 determine whether the impairment or combination of impairments
10 meets or equals an impairment in the Listing of Impairments
11 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix
12 1; if so, disability is conclusively presumed and benefits are
13 awarded. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

14 If the claimant's impairment or combination of impairments
15 does not meet or equal an impairment in the Listing, the fourth
16 step requires the Commissioner to determine whether the claimant
17 has sufficient residual functional capacity ("RFC")¹ to perform
18 his past work; if so, the claimant is not disabled and the claim
19 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The
20 claimant has the burden of proving he is unable to perform past
21 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets
22 that burden, a prima facie case of disability is established.
23 Id.

24 If that happens or if the claimant has no past relevant
25 work, the Commissioner then bears the burden of establishing that
26

27 ¹ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 the claimant is not disabled because he can perform other
2 substantial gainful work available in the national economy.
3 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination
4 comprises the fifth and final step in the sequential analysis.
5 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966
6 F.2d at 1257.

7 B. The ALJ's Application of the Five-Step Process

8 At step one, the ALJ found that Plaintiff had not engaged in
9 any substantial gainful activity since September 26, 2009, his
10 alleged onset date. (AR 27.) At step two, he found that
11 Plaintiff had the severe impairments of hepatitis C, degenerative
12 disc disease of the neck, left-shoulder impairment, and left-
13 wrist impairment. (Id.) At step three, he determined that
14 Plaintiff's impairments did not meet or equal any of the
15 impairments in the Listing. (AR 27-28.) At step four, the ALJ
16 found that Plaintiff had the RFC to perform light work² with
17 limitations to "occasional postural activities, no overhead work
18 with non-dominant left upper extremity, occasional fine/gross
19 manipulation with left upper extremity and no unprotected heights
20 or dangerous machinery." (AR 28.) Based on the VE's testimony,
21 the ALJ concluded that Plaintiff was unable to perform his past
22 relevant work but could perform jobs existing in significant
23 numbers in the national economy. (AR 32-34.) Accordingly, he

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25 ² "Light work involves lifting no more than 20 pounds at a
26 time with frequent lifting or carrying of objects weighing up to 10
27 pounds." §§ 404.1567(b), 416.967(b). "Even though the weight
28 lifted may be very little, a job is in this category when it
requires a good deal of walking or standing, or when it involves
sitting most of the time with some pushing and pulling of arm or
leg controls." Id.

1 found Plaintiff not disabled. (AR 34.)

2 **V. DISCUSSION**

3 Plaintiff contends that the ALJ erred in (1) formulating his
4 RFC and (2) assessing his credibility. (J. Stip. at 4.)

5 A. The ALJ Properly Formulated Plaintiff's RFC

6 Plaintiff contends that in formulating his RFC, the ALJ
7 erred by "rejecting the limitations on standing, walking, and
8 sitting described by" treating physician Khalid B. Ahmed,
9 "failing to weight the limitations on use of the left hand and
10 arm described by" examining physician David E. Fisher, and
11 "failing to consider the limitations in pushing and pulling
12 described by" examining physician Dr. Vincente R. Bernabe. (J.
13 Stip. at 10.)

14 1. Applicable law

15 A district court must uphold an ALJ's RFC assessment when
16 the ALJ has applied the proper legal standard and substantial
17 evidence in the record as a whole supports the decision. Bayliss
18 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must
19 consider all the medical evidence in the record and "explain in
20 [his] decision the weight given to . . . [the] opinions from
21 treating sources, nontreating sources, and other nonexamining
22 sources." §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii); see also
23 §§ 404.1545(a)(1) ("We will assess your residual functional
24 capacity based on all the relevant evidence in your case
25 record."), 416.945(a)(1); SSR 96-8p, 1996 WL 374184, at *2 (July
26 2, 1996) (same). In making an RFC determination, the ALJ may
27 consider those limitations for which there is support in the
28 record and need not consider properly rejected evidence or

1 subjective complaints. See Bayliss, 427 F.3d at 1217 (upholding
2 ALJ's RFC determination because "the ALJ took into account those
3 limitations for which there was record support that did not
4 depend on [claimant's] subjective complaints"); Batson v. Comm'r
5 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
6 required to incorporate into RFC any findings from treating-
7 physician opinions that were "permissibly discounted"). The
8 Court must consider the ALJ's decision in the context of "the
9 entire record as a whole," and if the "evidence is susceptible to
10 more than one rational interpretation, the ALJ's decision should
11 be upheld." Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
12 (9th Cir. 2008) (internal quotation marks omitted).

13 Three types of physicians may offer opinions in Social
14 Security cases: (1) those who directly treated the plaintiff, (2)
15 those who examined but did not treat the plaintiff, and (3) those
16 who did not treat or examine the plaintiff. Lester, 81 F.3d at
17 830. A treating physician's opinion is generally entitled to
18 more weight than that of an examining physician, and an examining
19 physician's opinion is generally entitled to more weight than
20 that of a nonexamining physician. Id.

21 This is true because treating physicians are employed to
22 cure and have a greater opportunity to know and observe the
23 claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996).
24 If a treating physician's opinion is well supported by medically
25 acceptable clinical and laboratory diagnostic techniques and is
26 not inconsistent with the other substantial evidence in the
27 record, it should be given controlling weight.

28 §§ 404.1527(c)(2), 416.927(c)(2). If a treating physician's

1 opinion is not given controlling weight, its weight is determined
2 by length of the treatment relationship, frequency of
3 examination, nature and extent of the treatment relationship,
4 amount of evidence supporting the opinion, consistency with the
5 record as a whole, the doctor's area of specialization, and other
6 factors. §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6).

7 When a treating or examining physician's opinion is not
8 contradicted by other evidence in the record, it may be rejected
9 only for "clear and convincing" reasons. See Carmickle v.
10 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)
11 (quoting Lester, 81 F.3d at 830-31). When a treating or
12 examining physician's opinion is contradicted, the ALJ must
13 provide only "specific and legitimate reasons" for discounting
14 it. Id. The weight given an examining physician's opinion,
15 moreover, depends on whether it is consistent with the record and
16 accompanied by adequate explanation, among other things.
17 §§ 404.1527(c)(3)-(6), 416.927(c)(3)-(6).

18 Furthermore, "[t]he ALJ need not accept the opinion of any
19 physician, including a treating physician, if that opinion is
20 brief, conclusory, and inadequately supported by clinical
21 findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
22 2002); accord Batson, 359 F.3d at 1195.

23 2. Relevant background

24 On September 26, 2009, when Plaintiff was working as a
25 roofer, he fell 15 feet from a roof and suffered fractures of the
26 pelvis, left sacrum, upper left humerus, and lower left radius.³

27
28 ³ The humerus is an upper arm bone and the radius is one of
the lower arm bones. Arm bones, Mayo Clinic, <http://>

1 (AR 340, see also AR 350-62.) He was taken to the hospital,
2 where surgery was performed the next day to repair the humerus
3 and radius fractures. (AR 368-69.) The following day, he was
4 discharged from the hospital with a prescription for pain
5 medication. (AR 338, 341.)

6 On March 19, 2010, Dr. Andrew S. Wong examined Plaintiff
7 and completed a "Final Complex Orthopedic/Neurologic Report of
8 Primary Treating Physician to Determine Issues of Permanent
9 Disability" as part of Plaintiff's worker's-compensation case.
10 (AR 371-75.) Dr. Wong, who was board eligible in orthopedic
11 surgery (AR 375), found that Plaintiff had "made a good recovery
12 from a severe injury"; although he "continues to have some
13 deficits from his injuries," his fractures were healed (AR 374).
14 Plaintiff could "function in his daily activities with his
15 current motion and strength" and had reached a state of "Maximum
16 Medical Improvement." (Id.) Dr. Wong opined that Plaintiff's
17 only work restriction was "no overhead work with the left arm."
18 (Id.)

19 On May 28, 2010, Dr. Fisher, an orthopedic surgeon, examined
20 Plaintiff, reviewed his medical records, and completed a
21 "Qualified Medical Evaluation."⁴ (AR 528-40.) Dr. Fisher
22 diagnosed "[l]eft proximal humerus fracture status post open
23 reduction/internal fixation"; "[l]eft distal radius
24 intraarticular fracture, status post open reduction/internal

25 _____
26 [www.mayoclinic.org/diseases-conditions/broken-arm/
27 multimedia/arm-bones/img-20007018](http://www.mayoclinic.org/diseases-conditions/broken-arm/multimedia/arm-bones/img-20007018) (last visited Feb. 3, 2015).

28 ⁴ Dr. Fisher stated that he did not have a treatment
relationship with Plaintiff. (AR 529.)

1 fixation"; and "[c]ontusion, left low back." (AR 537-38.) Dr.
2 Fisher did not believe that Plaintiff had reached maximum medical
3 improvement. (AR 538.) He listed Plaintiff's objective factors
4 of disability as tenderness in the trapezius⁵ and scapular border
5 on the left side, decreased range of motion in the left shoulder,
6 and healed scars on the shoulder and lower arm. (Id.) Dr.
7 Fisher believed that Plaintiff could perform modified duties,
8 with no lifting or reaching with his "right arm or hand"⁶ and "no
9 climbing on uneven surfaces or walking at unprotected heights."
10 (Id.)

11 On October 25, 2010, Dr. Fisher performed a "Qualified
12 Medical Reevaluation," finding Plaintiff was "maximally medically
13 improved." (AR 519-27.) He opined that Plaintiff could "perform
14 modified duties with no lifting or reaching with his left arm or
15 hand" and "no climbing on uneven surfaces or walking at
16 unprotected heights." (AR 525.) Dr. Fisher attributed
17 Plaintiff's limitations to "loss of range of motion in his left
18 shoulder and left wrist." (Id.) On April 18, 2011, Dr. Fisher
19 reviewed Plaintiff's December 2010 cervical-spine MRI and left-
20 shoulder and -wrist x-rays and completed a supplemental report.
21 (AR 516-18.) He noted that Plaintiff's cervical spine had
22 spurring and disc protrusions but that they did "not appear to be
23 significant enough to warrant surgical intervention." (AR 517.)
24
25

26 ⁵ The trapezius is one of the muscles of the shoulder. See
27 Stedman's Medical Dictionary 1158 (27th ed. 2000).

28 ⁶ Dr. Fisher presumably intended this limitation to apply
to Plaintiff's left arm and hand.

1 On September 23, 2011, a treating orthopedic surgeon, Dr.
 2 Ahmed, completed a one-page check-off "Permanent and Stationary
 3 Form." (AR 578; see also AR 440-41 (stating that Dr. Ahmed was
 4 board certified in orthopedic surgery).) Dr. Ahmed opined that
 5 Plaintiff was precluded from lifting more than 40 pounds,
 6 "forceful" pulling or squeezing, performing overhead work,
 7 standing or walking for more than one hour without a five-minute
 8 break, and sitting for more than one hour without a five-minute
 9 break. (Id.) On December 21, 2011, Dr. Ahmed completed a
 10 progress report, listing Plaintiff's diagnoses as "Cervical
 11 Strain, Disk Lesion with Radiculitis/Radiculopathy";⁷ "Left
 12 Shoulder Open Reduction Internal Fixation, Left Proximal Humerus,
 13 with Retained Hardware, Plates and Screws"; "Adhesive
 14 Capsulitis,"⁸ Left Shoulder, Tendonitis, Impingement Syndrome,⁹
 15 Rotator Cuff Tear"; "Internal Derangement, Open Reduction
 16 Internal Fixation, Left Distal Radius with Retained Hardware,
 17 Plates, and Screws"; "Tendonitis, Carpal Tunnel Syndrome, Left
 18 Hand"; "Fracture, Left Side of Rib Cage"; "Lumbar Strain, Disk
 19

20 ⁷ Radiculitis, or radiculopathy, is a disorder of the
 21 spinal nerve roots. See Stedman's Medical Dictionary 1503 (27th
 22 ed. 2000).

23 ⁸ Adhesive capsulitis, or "frozen shoulder," is a condition
 24 characterized by stiffness and pain in the shoulder joint. Frozen
 25 shoulder, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/frozen-shoulder/basics/definition/con-20022510>
 (last updated April 28, 2011).

26 ⁹ Impingement syndrome occurs with impingement of tendons
 27 or bursa in the shoulder from bones of the shoulder. Shoulder
 28 Impingement Syndrome, WebMD, <http://www.webmd.com/osteoarthritis/guide/impingement-syndrome> (last accessed Feb. 3, 2015).

1 Lesion of Lumbar Spine with Radiculitis/Radiculopathy"; and
2 symptoms of anxiety, depression, and intermittent insomnia. (AR
3 438.)

4 On January 23, 2012, Dr. Fisher completed a supplemental
5 report after reviewing additional medical records. (AR 510-15.)
6 He noted that the new medical reports showed that Dr. Ahmed had
7 performed cervical-spine facet blocks and a cervical-spine
8 epidural catheter, but he found that those "reports in no way
9 alter my opinion as stated regarding the issues of causation,
10 apportionment, or treatment." (AR 513-14.)

11 On February 23, 2012, medical consultant G. Lockie, a
12 pediatrician,¹⁰ reviewed Plaintiff's medical records and opined
13 that Plaintiff could lift and carry 20 pounds occasionally and 10
14 pounds frequently; stand and walk about six hours in an eight-
15 hour day; sit for about six hours in an eight-hour day; perform
16 unlimited pushing and pulling; frequently climb ramps and stairs,
17 balance, stoop, kneel, crouch, and crawl; and occasionally climb
18 ladders, ropes, and scaffolds. (AR 65-66.) Dr. Lockie further
19 opined that Plaintiff could only occasionally use his left upper
20 extremity to reach overhead, handle, finger, or feel and that he
21 must avoid unprotected heights and machinery. (AR 66-67.)

22 On October 2, 2012, Dr. Bernabe, a board-certified
23 orthopedic surgeon, examined Plaintiff and completed an
24

25 ¹⁰ Dr. Lockie's electronic signature includes a medical
26 specialty code of 32, indicating pediatrics. (AR 64); see Program
27 Operations Manual System (POMS) DI 26510.089, U.S. Soc. Sec. Admin.
28 (Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>;
POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012),
<http://policy.ssa.gov/poms.nsf/lnx/0426510090>.

1 orthopedic consultation at the Social Security Administration's
2 request. (AR 573-77.) Dr. Bernabe also reviewed Dr. Fisher's
3 October 25, 2010 report and Plaintiff's August 2010 lumbar- and
4 cervical-spine MRIs. (AR 573.) Dr. Bernabe diagnosed cervical
5 and lumbar musculoligamentous strain, "[s]tatus post internal
6 fixation of a left proximal humerus fracture with secondary
7 adhesive capsulitis and residual impingement syndrome," "[s]tatus
8 post internal fixation of left distal radius intraarticular
9 fracture," and "De Quervain's tendinitis of the left wrist."¹¹
10 (AR 576-77.) Dr. Bernabe opined that Plaintiff could lift and
11 carry 20 pounds occasionally and 10 pounds frequently; walk and
12 stand six hours in an eight-hour day; sit six hours in an eight-
13 hour day; perform manipulative activities frequently with the
14 left upper extremity and without limitation with the right upper
15 extremity; and occasionally push, pull, walk on uneven terrain,
16 climb ladders, work at heights, bend, crouch, stoop, and crawl.
17 (Id.) Dr. Bernabe opined that an assistive device was "[n]ot
18 medically necessary." (Id.)

19 On October 10, 2012, medical consultant Dr. Pamela Ombres¹²
20 reviewed the medical evidence and found that Plaintiff could lift
21 and carry 20 pounds occasionally and 10 pounds frequently; stand
22 and walk about six hours in an eight-hour day; sit for about six
23

24 ¹¹ De Quervain's tendinitis occurs when the tendons running
25 from the back of the thumb down the side of the wrist are swollen
26 and irritated. De Quervain tendinitis, MedlinePlus,
27 <http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000537.htm> (last updated May 15, 2014).

28 ¹² The record does not reflect Dr. Ombres's area of
specialization, if any. (See AR 90, 93-95.)

1 hours in an eight-hour day; perform unlimited pushing and
2 pulling; occasionally climb ramps, stairs, ladders, ropes, and
3 scaffolds; and occasionally balance, stoop, kneel, crouch, and
4 crawl. (AR 93-94.) She believed Plaintiff could occasionally
5 use his left upper extremity to reach overhead, handle, finger,
6 or feel and that he must avoid unprotected heights and machinery.
7 (AR 94-95.)

8 3. Analysis

9 The ALJ found that Plaintiff had the RFC to perform "light
10 work," which involved lifting a maximum of 20 pounds and
11 frequently lifting and carrying up to 10 pounds, see
12 §§ 404.1567(b), 416.967(b), with additional limitations to
13 "occasional postural activities, no overhead work with non-
14 dominant left upper extremity, occasional fine/gross manipulation
15 with left upper extremity and no unprotected heights or dangerous
16 machinery." (AR 28.) In so finding, the ALJ summarized the
17 medical evidence and gave "great weight" to the opinions of Drs.
18 Wong, Bernabe, Lockie, and Ombres and "minimal weight" to the
19 opinions of Drs. Ahmed and Fisher.¹³ (AR 30-32.) For the
20 reasons discussed below, the ALJ did not err in determining
21 Plaintiff's RFC.

22 Plaintiff contends that the ALJ failed to provide specific
23 and legitimate reasons for discounting Dr. Ahmed's opinion. (J.
24 Stip. at 10.) As an initial matter, at least some of the RFC
25 assessment was consistent with, or more restrictive than, Dr.

27 ¹³ Plaintiff disputes that the ALJ assigned any specific
28 weight to Dr. Fisher's opinion. (J. Stip. at 7, 9.) As explained
below, he is incorrect.

1 Ahmed's findings. The ALJ found that Plaintiff was precluded
2 from performing overhead work with his left arm (AR 28), which
3 was partially consistent with Dr. Ahmed's finding that Plaintiff
4 could not perform overhead work (AR 578). Moreover, the ALJ
5 found that Plaintiff could lift only 10 pounds frequently and a
6 maximum 20 pounds (AR 28), which was considerably more
7 restrictive than Dr. Ahmed's finding that Plaintiff could lift up
8 to 40 pounds, apparently on an unlimited basis (see AR 578).

9 Moreover, to the extent the ALJ rejected Dr. Ahmed's
10 opinion, he gave specific and legitimate reasons for doing so.
11 Dr. Ahmed opined that Plaintiff could not perform any overhead
12 work or "forceful" pulling or squeezing, apparently with either
13 arm (AR 578), but the ALJ correctly found that Plaintiff's
14 "impairments do not affect his right side" and "there is no
15 support for right sided upper extremity limitations" (AR 31; see
16 also AR 438 (Dr. Ahmed's diagnoses of several left-extremity
17 conditions but no right-extremity conditions), 371 (Dr. Wong's
18 notation of Plaintiff's complaints of left-shoulder stiffness and
19 weakness and "difficulty lifting heavy objects with his left
20 arm"), 374 (Dr. Wong's diagnoses of left-arm conditions and no
21 right-arm conditions)).

22 The ALJ also correctly observed that Dr. Ahmed's standing,
23 walking, and sitting limitations were unsupported because
24 Plaintiff's lower extremities and gait were "unremarkable." (AR
25 31.) Indeed, Plaintiff's treating and examining doctors
26 consistently found that Plaintiff had a normal gait, could walk
27 on his heels and toes, and did not need an assistive device.
28 (See, e.g., AR 373 (Dr. Wong's Mar. 2010 finding that Plaintiff

1 walked "without limp and without assistive device"), 537 (Dr.
2 Fisher's May 2010 finding that Plaintiff could "ambulate freely
3 without any assistive devices in the room, and was able to
4 ambulate in the toe, heel, and neutral gait"), 524 (Dr. Fisher's
5 Oct. 2010 finding that Plaintiff could "ambulate about the room
6 freely in the toe, heel, and neutral gait"), 575 (Dr. Bernabe's
7 Oct. 2012 finding that Plaintiff could walk on toes and heels,
8 had normal swing and stance phases, and did not need assistive
9 device).) Plaintiff nevertheless contends that Dr. Ahmed's
10 standing, walking, and sitting restrictions are supported by Dr.
11 Bernabe's diagnoses of cervical and lumbar strain and his
12 examination findings of muscle spasm, reduced range of motion, a
13 two-centimeter difference in the circumference of Plaintiff's
14 thighs, and a one-centimeter difference in the circumference of
15 his calves. (J. Stip. at 8-9.) But as Plaintiff also
16 acknowledges, based on those and other examination findings, Dr.
17 Bernabe nevertheless opined that Plaintiff could stand and walk
18 six hours and sit six hours in an eight-hour day. (AR 577.) Dr.
19 Bernabe's opinion therefore does not support Dr. Ahmed's finding
20 of significant walking, standing, and sitting limitations.

21 In any event, even if the ALJ had erred by not precluding
22 Plaintiff from performing "forceful" pushing and pulling or from
23 sitting, standing, or walking for more than an hour without a
24 five minute break (see AR 578), that error was harmless. See
25 Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir.
26 2006) (nonprejudicial or irrelevant mistakes harmless). The ALJ
27 ultimately found, based on the VE's testimony, that a person with
28 Plaintiff's RFC could perform three jobs existing in the national

1 economy: usher, which is light work, and table worker and bench
2 hand, which are sedentary. (See AR 33-34; see also AR 56.) At
3 the hearing, the ALJ asked the VE if a person would still be able
4 to perform those jobs if he "required five minute breaks each
5 hour"; the VE testified that the jobs "would still be able to be
6 sustained." (AR 57.)

7 Moreover, none of the three jobs appear to involve any
8 pushing or pulling. The usher job involves only "[a]ssist[ing]
9 patrons at entertainment events to find seats, search for lost
10 articles, and locate facilities, such as restrooms and
11 telephones," "[d]istribut[ing] programs to patrons," and
12 "[a]ssist[ing] other workers to change advertising display." DOT
13 344.677-014, 1991 WL 672865. The table-worker job involves
14 "[e]xamin[ing] squares (tiles) of felt-based linoleum material
15 passing along on conveyor and replac[ing] missing and substandard
16 tile." DOT 739.687-182, 1991 WL 680217. And the bench-hand job
17 involves only "[c]lut[ing], saw[ing], or break[ing] off gates from
18 jewelry castings, using shears, jeweler's saw, pliers, or foot
19 press equipped with cutting tool," "[r]emoving burrs and
20 smooth[ing] rough edges of casting, using file or grinding
21 wheel," "[s]traighten[ing] distorted castings, using foot press
22 equipped with shaping dies," and possibly "dipping castings in
23 water and acid solution" or "count[ing] and separat[ing] jewelry
24 casting into containers." DOT 700.687-062, 1991 WL 678937. None
25 of those responsibilities appear inconsistent with a preclusion
26 from forceful pulling or grasping.

27 Plaintiff also contends that the ALJ gave "no reasons" for
28 rejecting Dr. Fisher's opinion. (J. Stip. at 9.) But the ALJ

1 did not reject Dr. Fisher's finding that Plaintiff was precluded
2 from walking at protected heights; rather, he specifically
3 included such a limitation in Plaintiff's RFC. (See AR 28
4 (stating that Plaintiff could not work at "unprotected
5 heights").) Moreover, the ALJ discussed Dr. Fisher's opinion and
6 examination findings in the same paragraph he discussed Dr.
7 Ahmed's, noting that Dr. Fisher found that Plaintiff "could not
8 lift or reach with his left arm or hand, could not climb on
9 uneven surfaces or walk at unprotected heights." (AR 30-31; see
10 also AR 525 (Dr. Fisher's opinion regarding Plaintiff's work
11 restrictions)). The ALJ also correctly noted that Dr. Fisher
12 found during his examinations that Plaintiff's "gait was
13 unremarkable" and that he had "limited range of motion in his
14 shoulder and wrist but full range of motion in his cervical
15 spine," a "clinically strong" grip, and "no sensory loss in the
16 upper extremities." (AR 30; see AR 536 (May 2010 examination
17 findings of "full range of motion of his cervical spine," limited
18 range of motion of left shoulder and wrist, no sensory loss in
19 upper extremities, and "clinically strong" grip), 537 (May 2010
20 finding that Plaintiff could "ambulate freely without any
21 assistive devices in the room, and was able to ambulate in the
22 toe, heel, and neutral gait"), 523 (Oct. 2010 finding of limited
23 ranges of motion of shoulders and wrist), 524 (Oct. 2010 finding
24 that Plaintiff could "ambulate about the room freely in the toe,
25 heel, and neutral gait").) At the end of the paragraph
26 summarizing Drs. Fisher's and Ahmed's opinions, the ALJ noted,
27 among other things, that "[t]hese limitations are given minimal
28 weight because they are not supported by [Plaintiff's]

1 examination findings." (AR 31.) The most reasonable
2 interpretation is that in doing so, the ALJ referred to all of
3 the limitations and examination findings he discussed in that
4 paragraph, including Dr. Fisher's.

5 Moreover, that Dr. Fisher's opinion was inconsistent with
6 Plaintiff's examination findings was a permissible reason for
7 according it reduced weight. See Thomas, 278 F.3d at 957. Dr.
8 Fisher found that Plaintiff was precluded from any lifting or
9 reaching with his left arm or hand. But as discussed, Dr. Fisher
10 found during his examinations that Plaintiff had limited range of
11 motion of the shoulder and wrist but a "clinically strong" grip
12 and no sensory loss. Dr. Bernabe, moreover, examined Plaintiff
13 and similarly found that he had 4/5 motor strength in the left
14 upper extremity, 5/5 motor strength in all other extremities, and
15 "well preserved" sensation. (AR 576.) Dr. Bernabe concluded
16 that Plaintiff could lift and carry 20 pounds occasionally and 10
17 pounds frequently, and he found no limitations on Plaintiff's
18 ability to reach. (AR 577.) Moreover, Dr. Wong found that
19 Plaintiff had reduced range of motion in the left shoulder but
20 4/5 strength in two of his left rotator-cuff muscles and 5/5
21 strength in a third, with full range of motion of the lower back.
22 (AR 372-73.) Dr. Wong believed that Plaintiff's only functional
23 limitation was "no overhead work with the left arm." (AR 374.)
24 Based on those findings, the ALJ reasonably discounted Dr.
25 Fisher's opinion that Plaintiff was totally precluded from using
26 his left arm for any lifting or reaching, particularly given that
27 Plaintiff's RFC for light work involved lifting very little
28 weight.

1 In formulating Plaintiff's RFC, the ALJ was entitled to rely
2 on the opinions of Drs. Wong, Bernabe, Lockie, and Ombres instead
3 of those of Drs. Ahmed and Fisher. The ALJ permissibly credited
4 Dr. Wong's opinion because he was Plaintiff's treating physician
5 and his opinion was supported by his examination findings. (See
6 AR 30); §§ 404.1527(c)(2) (more weight generally given opinion
7 from treating source), 416.927(c) (same); §§ 404.1527(c)(3) (more
8 weight given opinion supported by objective findings),
9 416.927(c)(3) (same). Dr. Bernabe's opinion also constituted
10 substantial evidence supporting the RFC assessment because it was
11 based on his own independent clinical findings. See Tonapetyan
12 v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (finding that
13 examining physician's "opinion alone constitutes substantial
14 evidence" supporting RFC assessment "because it rests on his own
15 independent examination of" claimant); Andrews v. Shalala, 53
16 F.3d 1035, 1041 (9th Cir. 1995) (when "opinion of a nontreating
17 source is based on independent clinical findings," it "may itself
18 be substantial evidence"). Drs. Wong's and Bernabe's opinions
19 could also reasonably be credited because they both specialized
20 in orthopedic surgery (see AR 375, 577); §§ 404.1527(c)(5) (more
21 weight given to opinion from specialist about medical issues
22 related to area of specialty), 416.927(c)(5) (same), and Dr.
23 Bernabe also reviewed some of Plaintiff's medical records before
24 rendering his opinion (see AR 573); §§ 404.1527(c)(3) (in
25 weighing medical opinions, ALJ "will evaluate the degree to which
26 these opinions consider all of the pertinent evidence in
27 [claimant's] claim"), 416.927(c)(3) (same).

28 Drs. Lockie's and Ombres's opinions, moreover, were largely

1 consistent Drs. Bernabe's and Wong's findings. (See AR 63-67,
2 89-90, 93-95); Thomas, 278 F.3d at 957 ("The opinions of
3 non-treating or non-examining physicians may also serve as
4 substantial evidence when the opinions are consistent with
5 independent clinical findings or other evidence in the record.").
6 And both consulting doctors reviewed all the evidence in
7 Plaintiff's file at the time of their assessments. (See AR 63-
8 67, 89-90, 93-95); §§ 404.1527(c)(3), 416.927(c)(3). Thus, any
9 conflict in the properly supported medical-opinion evidence was
10 "solely the province of the ALJ to resolve." Andrews, 53 F.3d at
11 1041.

12 Finally, to the extent Plaintiff argues that the ALJ erred
13 by omitting from the RFC Dr. Bernabe's limitation to occasional
14 pushing and pulling (J. Stip. at 9-10; see also AR 577), reversal
15 is not warranted. As previously discussed, none of the jobs the
16 ALJ found Plaintiff could perform appear to involve pushing and
17 pulling. Thus, even if the ALJ erred by failing to include that
18 limitation in the RFC, it was harmless. See Stout, 454 F.3d at
19 1055 (nonprejudicial or irrelevant mistakes harmless).

20 Because the ALJ's RFC assessment was supported by
21 substantial evidence, remand is not warranted. See Young v.
22 Comm'r of Soc. Sec., __ F. App'x __, 2014 WL 6845867, at *1 (9th
23 Cir. Dec. 5, 2014) (finding RFC supported by substantial evidence
24 in part because it was consistent with opinions of examining and
25 consulting medical sources); Larsen v. Comm'r Soc. Sec. Admin.,
26 585 F. App'x 484, 485 (9th Cir. 2014) (substantial evidence
27 supported RFC when doctors' opinions "supported the ALJ's
28 determination").

1 B. The ALJ Properly Assessed Plaintiff's Credibility

2 Plaintiff contends that the ALJ "failed to articulate
3 legally sufficient reasons for rejecting" his subjective symptom
4 testimony. (J. Stip. at 22.)

5 1. Applicable law

6 An ALJ's assessment of symptom severity and claimant
7 credibility is entitled to "great weight." See Weetman v.
8 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
9 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
10 believe every allegation of disabling pain, or else disability
11 benefits would be available for the asking, a result plainly
12 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
13 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks
14 omitted).

15 In evaluating a claimant's subjective symptom testimony, the
16 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
17 at 1035-36. "First, the ALJ must determine whether the claimant
18 has presented objective medical evidence of an underlying
19 impairment [that] could reasonably be expected to produce the
20 pain or other symptoms alleged." Id. at 1036 (internal quotation
21 marks omitted). If such objective medical evidence exists, the
22 ALJ may not reject a claimant's testimony "simply because there
23 is no showing that the impairment can reasonably produce the
24 degree of symptom alleged." Smolen, 80 F.3d at 1282 (emphasis in
25 original).

26 Second, if the claimant meets the first test, the ALJ may
27 discredit the claimant's subjective symptom testimony only if he
28 makes specific findings that support the conclusion. See Berry

1 v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding
2 or affirmative evidence of malingering, the ALJ must provide
3 "clear and convincing" reasons for rejecting the claimant's
4 testimony. Lester, 81 F.3d at 834; Ghanim v. Colvin, 763 F.3d
5 1154, 1163 & n.9 (9th Cir. 2014).

6 In assessing a claimant's credibility, the ALJ may consider
7 (1) ordinary techniques of credibility evaluation, such as the
8 claimant's reputation for lying, prior inconsistent statements,
9 and other testimony by the claimant that appears less than
10 candid; (2) unexplained or inadequately explained failure to seek
11 treatment or to follow a prescribed course of treatment; (3) the
12 claimant's daily activities; (4) the claimant's work record; and
13 (5) testimony from physicians and third parties. Thomas, 278
14 F.3d at 958-59; Smolen, 80 F.3d at 1284. If the ALJ's
15 credibility finding is supported by substantial evidence in the
16 record, the reviewing court "may not engage in second-guessing."
17 Thomas, 278 F.3d at 959.

18 2. Relevant background

19 In an undated disability report, Plaintiff wrote that he was
20 unable to work because of "[b]roken arm, disc, neck, hip, [and]
21 rib problem." (AR 247.) In an August 29, 2012 function report,
22 Plaintiff stated that he slept all day and got up only to go to
23 doctor's appointments. (AR 287.) He did not take care of
24 anyone; his wife cared for their four children and cat. (AR
25 288.) Plaintiff could not scrub his own back and needed his wife
26 to help him. (Id.) He prepared sandwiches and frozen dinners
27 rarely and only when his wife was not available to make his
28 meals. (AR 289.) Plaintiff took out the trash each week and

1 could perform "simple" home repairs "with help." (Id.) He
2 rarely went grocery shopping, and his wife handled the bills.
3 (AR 290.) He could not drive because of his back pain,
4 headaches, and "stress." (Id.) Plaintiff called his mother on
5 the phone and sometimes attended church. (AR 291.) He rarely
6 visited other people and rarely attended his son's soccer games
7 or practices. (Id.)

8 Plaintiff reported that he could not lift more than 30 or 40
9 pounds and could not "reach out." (AR 292.) Squatting, walking,
10 standing, bending, and climbing stairs "tire[d] [him] easily" and
11 made his "bones ache." (Id.) His "memory and concentration"
12 were "not good," and he could pay attention for "30 minutes or
13 less." (Id.) He could walk one block before needing to rest for
14 five minutes. (Id.) Plaintiff wrote that he used a cane when
15 walking, a back brace when taking out the trash or doing other
16 chores, and a wrist brace "all the time." (AR 293.)

17 In a March 2012 disability report, Plaintiff stated that he
18 was "very forgetful" and had memory loss, "lots of pain in neck,
19 back, arms, [and] legs," and "severe headaches." (AR 263, 268.)
20 He had problems scrubbing his back in the shower, and his back
21 hurt when bending over to tie his shoes. (AR 267.) In a later
22 disability report, Plaintiff wrote that since October 2012, his
23 pain had worsened, walking "tire[d] [him] easily," and he had
24 "pain in legs and back." (AR 297.) He wrote that since
25 completing his March 2012 disability report, he had become
26 forgetful and developed anxiety and depression. (Id.)

27 At the May 2013 hearing, Plaintiff testified that he could
28 not work because of pain in his "bones," head, neck, and back.

1 (AR 45.) He took three hydrocodone a day for pain. (AR 46.)
2 Plaintiff was receiving treatment for hepatitis C, and because of
3 that condition, he sometimes felt like vomiting "and blood [came]
4 out" of his stomach. (AR 47.) Plaintiff testified that he had
5 that problem "[s]ometimes daily or sometimes the last three days
6 [sic]." (Id.) He had to get out of bed after two hours of sleep
7 to "walk a little bit because [his] knee starts to hurt and [his]
8 back." (AR 48.)

9 Plaintiff testified that he had never had a driver's license
10 and did not take his children to school. (AR 49.) He went
11 grocery shopping with his wife but could not walk for long and
12 used "a little cart that they lend you there." (AR 49-50.) He
13 attended church on Sundays but sat in the back because he needed
14 to get up and walk during the service. (AR 50.) He could not
15 help his four sons with their homework because he was "not able
16 to concentrate" and got headaches that made him "go blind." (AR
17 52.) Plaintiff testified that he could sit or stand 10 or 20
18 minutes before needing to lie down. (AR 51.) He could not bend
19 or sit for 20 minutes (AR 45), and he had headaches daily (AR 51-
20 52).

21 3. Analysis

22 The ALJ found that Plaintiff's "medically determinable
23 impairments could reasonably be expected to cause some of the
24 alleged symptoms" but that his "statements concerning the
25 intensity, persistence and limiting effects of these symptoms are
26 not credible to the extent they are inconsistent with" his RFC.
27 (AR 29.) As discussed below, the ALJ gave several clear and
28 convincing reasons, supported by substantial evidence, for

1 discounting Plaintiff's credibility.

2 The ALJ permissibly discounted Plaintiff's credibility based
3 on his inconsistent statements regarding his symptoms and
4 activities. (AR 28 (noting various specific inconsistencies));
5 see Smolen, 80 F.3d at 1284 (in assessing credibility, ALJ may
6 consider "ordinary techniques of credibility evaluation," such as
7 prior inconsistent statements and "other testimony by the
8 claimant that appears less than candid"). For example, in August
9 2012, Plaintiff reported that he did not take care of anyone, his
10 wife took care of the children, he "rarely" visited people, he no
11 longer took walks, and his only household chores were to take out
12 the trash weekly and perform "simple" home repairs "with help"
13 (AR 288-89, 291); similarly, at the May 2013 hearing, he
14 testified that he did not take his children to school (AR 49) and
15 could sleep for only two hours at a time before needing to get up
16 to walk around (AR 48-49). But as the ALJ found (AR 28), in
17 September 2011, Plaintiff reported to a psychiatrist that his
18 sleep was "fine" and "that he gets his children ready for school,
19 takes them to school, does some light household chores, picks
20 them up from school, is able to do his activities of daily
21 living, walks and visits with his father." (AR 28; see AR
22 410).)¹⁴ Although Plaintiff now argues that the differences in
23 his reported activities are attributable to his starting
24 hepatitis C treatment sometime around July 2012 (J. Stip. at 31;
25

26 ¹⁴ Plaintiff also reported to the psychiatrist that his
27 license had once been suspended because he did not take care of a
28 ticket (AR 411), which conflicted with his hearing testimony that
he had never had a driver's license (AR 49).

1 see also AR 563-66), in the August 2012 function report he did
2 not attribute any limitations to his hepatitis C treatment;
3 rather, he cited pain in his "hands, back, arms, legs,"
4 "backache," "tir[ing] easily," "headaches," and "stress" (AR 289-
5 91). That same month, Plaintiff's medical provider noted that
6 Plaintiff's hepatitis-treatment side effects were "moderate and
7 tolerable." (AR 562.) Moreover, Plaintiff's hepatitis treatment
8 was temporary, not indefinite (AR 562-63), and he points to
9 nothing else in the record that could cause a worsening of his
10 symptoms. In sum, Plaintiff's inconsistent statements undermined
11 the credibility of his subjective complaints.

12 The ALJ also discounted Plaintiff's credibility because he
13 "came to the hearing wearing a left wrist brace, back brace and
14 using a cane," but his "physical examination findings do not
15 establish the need for such devices." (AR 29.) Indeed, although
16 Plaintiff was instructed to wear a wrist splint for two weeks
17 after his September 2009 surgery and was then provided a
18 removable brace (see AR 368, 389), nothing indicates that he
19 needed to continue to use it for years thereafter. Moreover,
20 none of Plaintiff's treating or examining physicians opined that
21 Plaintiff needed to use a cane; to the contrary, they regularly
22 observed that he had a normal gait and could walk without an
23 assistive device. (See AR 373 (Dr. Wong's Mar. 2010 finding that
24 Plaintiff walked "without limp and without assistive device"),
25 537 (Dr. Fisher's May 2010 finding that Plaintiff could "ambulate
26 freely without any assistive devices in the room, and was able to
27 ambulate in the toe, heel, and neutral gait"), 524 (Dr. Fisher's
28 Oct. 2010 finding that Plaintiff could "ambulate about the room

1 freely in the toe, heel, and neutral gait"), 526 (Dr. Fisher's
2 Oct. 2010 notation that Plaintiff "has no gait alteration"), 575
3 (Dr. Bernabe's Oct. 2012 finding that Plaintiff could "walk
4 unassisted" and on his toes and heels and had "normal swing and
5 stance phases").) Dr. Bernabe, moreover, specifically found that
6 Plaintiff "uses a cane but an assistive device is not medically
7 necessary." (AR 575; see also AR 577.) The ALJ was entitled to
8 discount Plaintiff's credibility based on his use of a wrist
9 brace and cane at the hearing. See Verduzco v. Apfel, 188 F.3d
10 1087, 1090 (9th Cir. 1999) (ALJ properly discounted credibility
11 when claimant "walked slowly and used a cane at the hearing" even
12 though no doctor indicated he used or needed assistive device and
13 two doctors noted he did not need one).

14 The ALJ may have erroneously found that Plaintiff's records
15 did not establish he needed a back brace (AR 29), however,
16 because it appears that in January 2011, Dr. Ahmed recommended
17 that he use a lumbosacral brace for support (AR 459 (recommending
18 "LSO brace for support"); see also AR 506 (Apr. 2011 request for
19 "LSO brace for support")). Although Plaintiff's need for such a
20 brace seems questionable given that a lumbar-spine MRI was normal
21 (see AR 475 (Dr. Ahmed's Sept. 2010 notation that lumbar-spine
22 MRI "came out to be negative")) and an x-ray showed only "mild
23 degenerative changes" (AR 579 (Mar. 2013 x-ray report)), given
24 Dr. Ahmed's explicit recommendation, the ALJ's discounting of
25 Plaintiff's credibility based on the use of a back brace at the
26 hearing may have been improper. Any error was harmless, however,
27 because the ALJ's other credibility findings, including those
28 based on Plaintiff's use of a cane and wrist brace, were proper

1 and supported by substantial evidence. See Carmickle, 533 F.3d
2 at 1163 (ALJ's errors harmless when they did not "negate the
3 validity" of adverse credibility determination (internal
4 quotation marks omitted)).

5 Finally, the ALJ permissibly discounted Plaintiff's
6 subjective complaints because they were inconsistent with the
7 medical evidence. (AR 29.) The ALJ found that Plaintiff "has
8 been examined by multiple medical doctors opining he is able to
9 perform a greater capacity of work activity than what the
10 claimant alleges he is limited to." (AR 29.) Indeed, Plaintiff
11 alleged that his medical impairments were so disabling that, for
12 example, he slept all day and got up only to go to doctor's
13 appointments (AR 287), could walk only one block before needing
14 to rest for five minutes (AR 292), and could sit or stand only 10
15 or 20 minutes before needing to lie down (AR 51). But none of
16 the doctors who rendered opinions found that Plaintiff was so
17 limited. Rather, Drs. Wong and Fisher placed no limits on
18 Plaintiff's ability to stand, sit, or walk at regular heights (AR
19 374, 525); Drs. Bernabe, Lockie, and Ombres found that Plaintiff
20 could stand and walk for six hours and sit for six hours in an
21 eight-hour day (AR 66, 93, 577); and Dr. Ahmed found that
22 Plaintiff could stand and walk for up to an hour or sit for up to
23 an hour before needing a five-minute break (AR 578).

24 The ALJ also noted that Plaintiff's treatment records did
25 not support the alleged "frequency or severity" of his hepatitis
26 C symptoms. (AR 29.) At the hearing, Plaintiff testified that
27 his hepatitis made him "feel like vomiting and blood comes out"
28 of his stomach, which happened "[s]ometimes daily or sometimes

1 the last three days [sic]." (AR 47.) But before starting
2 antiviral treatment for his hepatitis C, Plaintiff reported that
3 he "fe[lt] well" and had no complaints. (AR 566.) After
4 starting treatment, sometime around July 2012, Plaintiff
5 complained of nausea and other side effects (see, e.g., 564 (July
6 2012, noting that Plaintiff "feels tired, sick" and vomited after
7 "4 injections")), but they seemed to improve with medication (see
8 AR 563 (Aug. 7, 2012, noting that Plaintiff's nausea better with
9 medication, no vomiting)). By the end of August 2012, moreover,
10 Plaintiff still complained of fatigue and persistent nausea, but
11 his side effects were noted to be "moderate and tolerable." (AR
12 562.) As such, substantial evidence supports the ALJ's finding
13 that Plaintiff's medical records undermined the credibility of
14 his claims concerning hepatitis-treatment symptoms.¹⁵

15 The ALJ also correctly noted that Plaintiff claimed to have
16 daily headaches but "has had various examinations wherein he did
17 not report problems with headaches." (AR 29.) Indeed, although
18 Plaintiff claimed that daily headaches made him "go blind" (AR
19 51-52), most of his progress notes do not reflect any complaints
20 of headaches (compare AR 481-83 (Dr. Ahmed's July 2010 report
21 stating that Plaintiff suffered from headaches) with AR 562-64,
22 567 (June, July & Aug. 2012 treatment notes not mentioning
23

24 ¹⁵ Even if Plaintiff's hepatitis treatment had rendered him
25 unable to work, it was scheduled to last only 48 weeks and
26 therefore would not have met the durational requirement for a
27 disability. (See AR 562-63); 42 U.S.C. § 423(d)(1)(A) (defining
28 "disability" as "inability to engage in any substantial gainful
activity by reason of any medically determinable physical or mental
impairment which can be expected to result in death or which has
lasted or can be expected to last for a continuous period of not
less than 12 months"); accord Drouin, 966 F.2d at 1257.

1 headaches), 566 (June 2012 treatment note stating that Plaintiff
2 "feels well" and had no complaints), 583 (Mar. 2013 progress note
3 not mentioning headaches), 587 (Oct. 2012 progress note not
4 mentioning headaches), 586 (Jan. 2013 progress note showing
5 negative sign next to words "headache today"), 590 (health-
6 history form in which "Frequent Headaches" not checked under
7 "medical history" or "present or recent concerns" sections), 581
8 (Apr. 2013 letter from treating nurse practitioner listing
9 diagnosed and treated conditions, which did not include
10 headaches).)¹⁶ Such conflicts with the medical evidence are
11 permissible reasons for discounting Plaintiff's credibility. See
12 Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although
13 lack of medical evidence cannot form the sole basis for
14 discounting pain testimony, it is a factor that the ALJ can
15 consider in his credibility analysis."); Carmickle, 533 F.3d at
16 1161 ("Contradiction with the medical record is a sufficient
17 basis for rejecting the claimant's subjective testimony.");
18 Lingenfelter, 504 F.3d at 1040 (in determining credibility, ALJ
19 may consider "whether the alleged symptoms are consistent with
20 the medical evidence").

21 In sum, the ALJ provided clear and convincing reasons for
22 discrediting Plaintiff's subjective complaints. Because those
23


24 ¹⁶ Plaintiff contends that the ALJ "stated that the record
25 did not contain references to headaches" (J. Stip. at 20), but as
26 noted above, the ALJ actually found that Plaintiff "has had various
27 examinations wherein he did not report problems with headaches" (AR
28 29), not that Plaintiff never reported them. Indeed, given that
Plaintiff claimed he had headaches daily and they made him "go
blind" (AR 51-52), one would reasonably expect him to regularly
report his headaches to his treating sources.

1 findings were supported by substantial evidence, this Court may
2 not engage in second-guessing. See Thomas, 278 F.3d at 959.
3 Plaintiff is not entitled to remand on this ground.

4 **VI. CONCLUSION**

5 Consistent with the foregoing, and pursuant to sentence four
6 of 42 U.S.C. § 405(g),¹⁷ IT IS ORDERED that judgment be entered
7 AFFIRMING the decision of the Commissioner and dismissing this
8 action with prejudice. IT IS FURTHER ORDERED that the Clerk
9 serve copies of this Order and the Judgment on counsel for both
10 parties.

11
12
13 DATED: February 11, 2015



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ¹⁷ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record, a
28 judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."